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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2953 of 1997

with

MISC.CIVIL APPLICATION No 1212 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAVSARI COTTON & SILK MILLS LTD

Versus

BOARD FOR INDUSTRIAL & FINANCIAL RECONSTRUCTION

Appearance:

1. Special Civil Application No. 2953 of 1997
MR.S.B.VAKIL WITH MR GN SHAH for Petitioners
SERVED BY DS for Respondent No. 1,10,11,12,13,14
MR.K.N.RAVAL WITH MR AK CLERK for Respondent No. 3
MR YS LAKHANI for Respondent No. 9
2. Misc.Civil ApplicationNo 1212 of 1997
MR.S.B.VAKIL WITH MR GN SHAH for Petitioners
MR.K.N.RAVAL WITH MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 14/07/97

ORAL ORDER:

By this petition, though stated to be under Article 226 of the Constitution of India, but essentially it is under Article 227 of the Constitution of India, the petitioners have questioned the legality and validity of the order dated 18.2.1997 passed by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR), confirming the order passed by the Board for Industrial and Financial Reconstruction (BIFR) dated 5.12.1996, whereby the scheme of Workers Industrial Co-operative Society for revival of the textile mill, Nasvsari Silk & Cotton Mills Ltd., came to be sanctioned. Thus, the concurrent findings and orders are under challenge in the present petition.

I have heard Mr.S.B.Vakil, the learned Senior Counsel for the petitioners, at length. He argued the matter before Summer Vacation and on re-opening of the court after Summer Vacation. He made his submissions in second sessions of the Court from 4th July 1997 to 10th July 1997. The matter is thus heard as if of a final hearing matter.

Mr.Vakil read and relied upon the various provisions of the scheme and made attempts to show that the scheme, is neither viable nor workable and that the means of finance in operating the textile mill are not available. He also contended that no proper consent of the workers was obtained nor contribution of the workers, as provided in the scheme, was available. In submission of Mr.Vakil, no insurance was taken by workers while operating the mill. He, therefore, contended that the scheme was arbitrary for want of proper fund and finance. He also assailed the provisions of the scheme with regard to the retrenchment of the workers, contending that such retrenchment was not feasible as retrenchment compensation was available to be paid to such workers.

Mr.Vakil also submitted that the scheme was not workable as it was entirely dependant upon the contribution of workers to the tune of rupees hundred lakhs which was uncertain and not likely to be received. It was also contended that the agreement on commitment of the Government of Gujarat in respect of the reliefs and concessions to be granted by the concerned authorities

under clause 4.3 of the scheme are not forthcoming. Mr.Vakil thus made all his attempt to analyse the scheme contending that the scheme was not reasonable nor rational. Mr.Vakil has taken me through the various averments made in the petition and the affidavits-in-reply of the respondents Nos.3 and 4 (pages 225 to 286) and further the affidavits-in-rejoinder of the petitioners (pages 454 to 553).

While considering and dealing with the above contentions, I am of the view that this Court has a very restricted or limited jurisdiction under Article 227 of the Constitution of India to deal with the petition. This Court cannot sit in appeal over the decisions of BIFR and AAIFR. Assuming the petition to be under Article 226 of the Constitution of India, even then the concurrent decisions rendered by the BIFR and AAIFR cannot be dealt with as is sought by Mr.Vakil. It is well-settled that the High Court, in exercise of its jurisdiction under Article 226 of the Constitution should confine itself to correcting error, if any, in regard to the jurisdiction. The High Court cannot have, nor it could assume the jurisdiction of appellate Court and correct mistake assumed to have been committed by the Tribunal.

Mr.K.N.Raval, learned Senior Counsel for the respondents Nos. 3 and 4, has placed reliance on the case of U.P.Financial Corporation vs. M/s.Gem Cap (India) Pvt.Ltd. and others, reported in AIR 1993 Supreme Court, page 1435, contending that the High Court while dealing with and disposing of the petitions under Article 226 of the Constitution of India, has a limited jurisdiction and cannot sit over such decision as an appellate authority. The decision relied on by Mr.Raval lays down that in a matter between the Corporation and its debtor, a writ court has no say except in two situations : (1) there is a statutory violation on the part of the Corporation, or (2) where the Corporation acts unfairly i.e. unreasonably. Keeping in mind the limited jurisdiction of the High Court in exercise of its powers under Article 226 of the Constitution of India, the contentions raised by Mr.Vakil are not in regard to any error of jurisdiction in framing the impugned scheme by BIFR. Nor any error apparent on face of record is pointed out. Viability of the scheme in same eventualities or on taking place of same events or otherwise cannot be dealt with in limited jurisdiction of this Court under Articles 226 and 227 of the Constitution

of India.

The Sick Industrial Companies (Special Provisions) Act, 1985 has been enacted in the public interest and special provisions are made with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto. In view of this object of the Act, I do not find substance in any of the contentions raised by Mr. Vakil.

Before the aforesaid contentions of Mr. Vakil are dealt with, it may be mentioned that the Sick Industrial Companies (Special Provisions) Act, 1985 being a special enactment providing for special Tribunals for examining the possibilities of revival of sick units, this Court acting under Article 226 of the Constitution of India, would not interfere with the scheme sanctioned by the BIFR and confirmed by AAIFR, unless grave infirmity causing injustice to any party is pointed out. Having heard Mr. Vakil at length as aforesaid and on examination of the voluminous records of the case, I am of the view that in the instant case no such infirmity is pointed out so as to warrant exercise of extra-ordinary jurisdiction of this Court under Art. 226 of the Constitution of India.

The records reveal that the BIFR has taken utmost care and caution in framing the scheme to revive the sick unit of the petitioners. The BIFR is seized of the matter and is retaining control over the implementation of the scheme by virtue of the provisions of section 18 of the Act of 1985. The BIFR thus is monitoring the scheme and the aforesaid questions raised on behalf of the petitioners could not be examined and dealt with by this Court, inasmuch as the petitioners could raise all such issues before the BIFR. Even assuming that two views may be possible, this Court exercising jurisdiction under Article 226, would be slow to interfere with concurrent decisions of BIFR and AAIFR.

It may be stated that the petitioner No.2, as the former promoter of the company has challenged the scheme sanctioned by the BIFR and confirmed by the AAIFR whereby the respondent No.3-Workers' Union has proposed to revive the sick unit by forming workers' co-operative society, i.e respondent No.4-Society. BIFR prepared a draft scheme on July 22, 1996 and the same was published for inviting objections from all concerned. Sixty days' time was provided for filing objections to the draft scheme and thereafter the scheme was considered in hearing held at BIFR on 14.10.1996. The scheme was finally sanctioned on 5.12.1996. The petitioner preferred Appeal No.21/96 before AAIFR against the said sanctioned scheme and the AAIFR, after considering all the contentions raised on behalf of the petitioners, dismissed the appeal on 18.2.1997. It is the case of the respondent No.4 that it has thereafter commenced the implementation of the scheme according to the provisions of the scheme and its compliance-schedule. The other agencies, such as IDBI and the banks, have also taken steps for implementing the scheme. Under the circumstances, this Court cannot interfere with the implementation of the scheme, as it is likely to seriously prejudice the prospects of the implementation and the ultimate success of the scheme. It is disclosed from the record that a large number of workers, who are eager to implement the scheme, would lose patience and the outcome of the scheme would be frustrated in event of stalling the scheme, as is proposed by the petitioners.

It would not be out of place to state at this juncture that the petitioners, including the former promoter of the mill, had placed a scheme for rehabilitation costing about Rs.147 lakhs and it was sanctioned somewhere in January, 1991. There was utter failure in implementation of the said scheme on account of mismanagement in March 1994. The Company was therefore eventually closed in July 1994. It appears that the BIFR, therefore, directed to put necessary advertisements in regard to the scheme. On or about 29.3.1995, the workers of the petitioner-Textile Mills expressed their willingness to withdraw their proposal submitted earlier in event of viable promoter being available. The company named Swan Mills, came forward; however, it did not put up any concrete proposal to revive the petitioner-Mills. BIFR, therefore, passed an order recording that none has come forward, including Swan Mills, with a viable proposal. It appears from the record that on 1.2.1996, the said Swan Mills

categorically stated, during the course of hearing before BIFR, that at that stage they had no proposal to revive the mills. Thus, having failed in all the attempts by or on behalf of the petitioners to revive the mills, the BIFR, having considered all the pros and cons of the situations and circumstances, has sanctioned the scheme at Annexure 'D' to the petition.

As regards viability or workability of the scheme on account of paucity of fund and finance, the scheme is yet to commence and the Government of Gujarat, IDBI and other financial institutions are to provide funds in accordance with the provisions of the Scheme. The grievance of the petitioner in this behalf is thoroughly misconceived and premature. The workers have already contributed rupees fifty lakhs in implementation of the scheme. Admittedly, the petitioners have not paid the Provident Fund amount to its workers. The workers have not, therefore, been able to create the equity of rupees one crore because of non-payment of Provident Fund amount by the petitioners. The respondents have filed Special Civil Application No.339/97 before this Court in which the petitioner No.2 agreed to disburse the balance amount of 40 per cent to the credit of the PF accounts of the workers on or before 15.5.1997. It is true that the said period was extended. On expiry of the extended period, even the petitioner No.2 has not effected the balance amount of PF, as a result of which the scheme is delayed in its implementation because of non-payment of PF amount by the petitioner No.2. As is stated in the affidavit-in-reply (page 240 of the compilation), the third respondent-Union has, therefore, paid a loan of rupees fifty lakhs to the workers to become members of the co-operative society and contribute towards its equity share capital. Accordingly the workers have contributed rupees fifty lakhs towards the equity share capital of the workers' co-operative society.

As regards the contention of Mr.Vakil in regard to individual consent of the workers in implementation of the scheme, I am afraid, there does not appear to be any such provision in the scheme. It was also contended by Mr.Vakil, relying upon the letters of some of the workers (at page 183) that the workers are not willing to operate the scheme. The BIFR and the AAIFR have considered this aspect before sanctioning the scheme. The third respondent is the representative and approved Union under the Bombay Industrial Relations Act and as such it is the sole bargaining agent on behalf of all the employees of

the textile industries. The Union and the Co-operative Society have entered into an agreement as per the scheme, which is at page 383 of the compilation. The case of Santuram Khudai v. Kimatrai Printers & Processors Pvt.Ltd. and others, reported in AIR 1978 Supreme Court, page 202, was sought to be relied upon by the third respondent contending that the representative Union could take decisions for and on behalf of all the workers. The submission of Mr.Vakil that the authority relied on, is not applicable to the facts of the case, cannot be accepted.

It is also revealed from the records that the individual workers have started the scheme. Their agreement is on record (page 297 to 362). Therefore, about 2000 individual workers have also made applications for withdrawal of the amount of providend fund for making contribution to the workers' industrial co-operative society, indicating that they are supporting the scheme and are desirous of contributing to the equity from their PF account. This speaks volumes about the zeal and readiness of the workers to operate the mills and to make the scheme successful. In the facts and circumstances of the case, any attempt by the petitioners to scuttle the scheme cannot be allowed.

Mr.Vakil next assailed the provisions with regard to personal guarantees of the ex-Directors with various financial institutions, contending that such provisions of the personal guarantee are unreasonable and illegal. The scheme provides that the guarantee of the former Directors of the Company will continue to remain in force even after change of management/in favour of the workers' co-operative society till the guaranteed amounts are fully recovered. In submission of Mr.Vakil, such provision of the personal guarantee was without the consent of the Directors and that such a personal guarantee cannot be continued for ever. It is also the grievance of the petitioners that their share-holdings are taken away or adjusted at a token price of rupee one and that such a provision is neither rational for compelling the Directors to transfer their shares for such token amount of rupee one per share and the provision with regard thereto is arbitrary. On close examination of this grievance, it is difficult to agree with it or accept it, for the reason that the BIFR has power under the Sick Industrial Companies (Special

Provisions) Act, 1985 to implement the scheme. Apart that, the Supreme Court in case of Navnit R.Kamani and others v. R.R.Kamani, reported in AIR 1989 Supreme Court, page 9 has settled the position in this regard holding, inter alia that the scheme sanctioned by the Board did not suffer from any infirmity and it had been considered to be feasible and economically viable by experts. The Supreme Court further held that the liabilities far exceeded the assets and even by applying the break-up or back-up method the value of the shares could be determined only at the intrinsic value of the shares and the Board reached the firm conclusion that each share had zero value and even so the Board directed that the value of the share be reduced to Re.1/- per share and directed them to transfer the shares at Re.1/per share to the employees. The submission of Mr.Vakil that the said decision of the Supreme Court in Kamani's case (supra) is not applicable to the facts of the present case cannot be accepted.

As regards the objections raised on behalf of the petitioners that the Unit Trust of India and other financial institutions have not come forward in implementation of the scheme or starting the scheme by advancing the amount, it is premature and misconceived inasmuch as the petitioners cannot speak anything for the Unit Trust of India. There is nothing on the record to suggest that the Unit Trust of India has raised any objection before BIFR. The scheme was published and objections were invited. Despite series of notices issued to the Unit Trust of India, no objections were filed, nor the Unit Trust of India had appeared. So is the case with other financial institutions.

Mr.Vakil contended that the respondents Nos. 3 and 4 did not allow the petitioners-Directors to enter into the premises of the mill. On implementation of the scheme, petitioners Nos.2,3 and 4 did not continue to be Directors any longer. In fact, the petitioners are supposed to hand over the possession of the aforesaid premises of the textile mill so as to enable the respondent No.4, Shri Morarji Desai Textile Labour Co-operative Industries Ltd., to implement the scheme, as is framed by the BIFR. There are also allegations by the petitioners that the respondent No.4 sold away different goods and the criminal complaint is lodged, whereas the respondents Nos.3 and 4 have also alleged that the petitioner No.2 himself has sold away the goods (pages

255,256, 265,273 of the compilation). These are all questions of facts which cannot be gone into in the present petition. In this connection, Mr.Vakil requested this Court to direct the concerned Police Inspector to submit his report on the investigation of the complaint of the petitioners. Respondents Nos.3 and 4 invited the attention of this Court to the order in Special Criminal application No.767/97 filed by the 4th respondent, wherein this Court (Coram:N.J.Pandya,J.) has passed the order on 9.7.1997, directing the Inspector of Police, Navsari Town, to produce the communication either in the nature of complaint or otherwise filed by the Chairman and Managing Director of Navsari Cotton and Silk Mills Ltd., i.e. the petitioners Nos.2,3 and 4 herein, before the Court. Ad interim relief is also granted restraining the Inspector of Police of Navsari Town from acting upon any such communication, complaint or information or writing that he might have received. Under the circumstances, this Court has not to initiate any action whatsoever on the request of Mr.Vakil for calling for the report of the Investigating Police Officer. Similarly, with regard to the entry of petitioners Nos.2,3 and 4 in the mill premises, this Court (Coram:M.R.Callal,J.) has passed orders on 1.7.1997 in Civil Misc.Application No.1192/97 in Special Civil Application No.339 of 1997. By the said order, the said Misc.Civil Application came to be dismissed refusing to extend the time for payment of Provident Fund amount by the second respondent to the workers. Thus, there being separate proceedings in this behalf and the orders having been passed therein, this Court is not inclined to pass any order in the present proceedings, as requested by Mr.Vakil.

In the above view of the matter, there is no merit in the petition. The petition is, therefore, liable to be dismissed, and is accordingly dismissed. Notice discharged. Ad interim relief stands vacated.

Consequently, Misc. Civil Application No.1212 of 1997 is also dismissed.
